

SENATE BILL No. 121

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-9-1-12.5; IC 5-8-1-38; IC 12-21-5.

Synopsis: Transfer of campaign funds after conviction. Provides that upon removal from office of a public officer by operation of law after June 30, 2016, because of the public officer's conviction of a felony, the public officer's candidate's committee is disbanded by operation of law. Provides that upon conviction of the public officer, the court must file a certified copy of the sentencing order with: (1) the election commission, in the case of a public officer removed from a state office or a legislative office; or (2) the appropriate county election board, in the case of a public officer removed from a local office or a school board office. Provides that upon receipt of the sentencing order, the commission or county election board shall issue an order dissolving the public officer's candidate's committee and ordering the treasurer of the committee to: (1) pay any outstanding debts or judgments of the committee; and (2) transfer any surplus of contributions less expenditures to the division of mental health and addiction (division) to be held in trust and used for the provision of mental health services for residents of Indiana, pending final disposition in the criminal case that resulted in the conviction of the public officer. Specifies duties of the division with respect to surplus funds held in trust. Establishes the public officer mental health trust fund for the purpose of providing mental health services for residents of Indiana. Provides that the fund: (1) shall be administered by the division; and (2) consists of surplus funds transferred to the division by candidates' committees of public officers removed from office by operation of law because of felony convictions. Makes an appropriation.

Effective: July 1, 2016.

Randolph Lonnie M

January 5, 2016, read first time and referred to Committee on Elections.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 121

A BILL FOR AN ACT to amend the Indiana Code concerning elections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-9-1-12.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]: **Sec. 12.5. (a) This section applies to a public officer who**
4 **is removed from office by operation of law under IC 5-8-1-38 after**
5 **June 30, 2016.**
6 **(b) Upon removal from office of a public officer by operation of**
7 **law under IC 5-8-1-38 because of the public officer's conviction of**
8 **a felony, the public officer's candidate's committee is disbanded by**
9 **operation of law.**
10 **(c) Whenever a public officer is removed from office by**
11 **operation of law under IC 5-8-1-38 because of the public officer's**
12 **conviction of a felony, the court in which the public officer is**
13 **convicted under IC 5-8-1-38(b)(1) must file a certified copy of the**
14 **sentencing order with:**
15 **(1) the commission, in the case of a public officer removed**
16 **from a state office or a legislative office; or**
17 **(2) the appropriate county election board, in the case of a**



public officer removed from a local office or a school board office.

(d) Upon receipt of a sentencing order under subsection (c), the commission or county election board shall issue an order dissolving the public officer's candidate's committee and ordering the treasurer of the public officer's candidate's committee to:

(1) pay any outstanding debts or judgments of the committee; and

(2) notwithstanding section 12(f) of this chapter, and subject to section 12(g) of this chapter, transfer any surplus of contributions less expenditures to the division of mental health and addiction established by IC 12-21-1-1 to be deposited and held in trust in the public officer mental health trust fund established by IC 12-21-5-5.5, as specified in IC 12-21-5-5, and used for the provision of mental health services for residents of Indiana, pending final disposition in the criminal case that resulted in the conviction of the public officer. If:

(A) a surplus of contributions less expenditures exists after the payment of any outstanding debts or judgments under subdivision (1); and

(B) an appeal is taken in the criminal case that resulted in the conviction of the public officer;

the public officer or the public officer's attorney shall serve written notice of the appeal on the division of mental health and addiction at the time of the filing of the appeal or upon the transfer of funds to the division under this subdivision, whichever is later.

(e) The election division or county election board shall send the order described in subsection (d) by certified mail to the last known address of the chairman and treasurer of the candidate's committee.

(f) Notwithstanding subsection (d)(1), if the commission or county election board finds that the prudent use of public resources makes further efforts to collect any outstanding civil penalty imposed against the candidate's committee wasteful or unjust, the commission or board may waive the outstanding civil penalty previously imposed by the commission or board against the committee.

(g) The election division shall arrange for the publication in the Indiana Register of an order issued under subsection (d). A county election board shall publish a notice under IC 5-3-1 stating that the



public officer's candidate's committee has been disbanded under this section. The notice must state the date of the order and the name of the committee, but the board is not required to publish the text of the order.

(h) An order issued under subsection (d) takes effect immediately upon its adoption.

(i) If the public officer's conviction is:

(1) reversed;

(2) vacated;

(3) set aside;

(4) for a felony other than a felony arising out of an action taken in the public officer's official capacity, reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or

(5) not entered because the trial court did not accept the guilty plea;

and a surplus of contributions less expenditures has been transferred to the division of mental health and addiction under subsection (d)(2) following the public officer's removal from office, the division of mental health and addiction shall return to the public officer the surplus held in trust under subsection (d)(2), along with any interest earned on the surplus, upon receipt by the division from the public officer or the public officer's attorney of a certified copy of the order reversing, vacating, setting aside, or reducing the conviction. Money returned to a public officer under this section shall be used by the public officer only as permitted by section 12(f) of this chapter.

(j) If:

(1) the treasurer of a candidate's committee transfers a surplus of contributions less expenditures to the division of mental health and addiction under subsection (d)(2); and

(2) the division of mental health and addiction does not receive, within one (1) year of the transfer described in subdivision (1), notice under subsection (d)(2) that an appeal has been taken in the criminal case that resulted in the conviction of the public officer with respect to whom the surplus was transferred;

the division of mental health and addiction shall use the surplus transferred, plus any interest earned on the surplus, for the provision of mental health services for residents of Indiana.

(k) If:

(1) the treasurer of a candidate's committee transfers a



surplus of contributions less expenditures to the division of mental health and addiction under subsection (d)(2);

(2) the division receives notice under subsection (d)(2) that an appeal has been taken in the criminal case that resulted in the conviction of the public officer with respect to whom the surplus was transferred; and

(3) five (5) years have elapsed since the date of:

(A) the filing of the appeal, in the case of the first notice sent under this subsection; or

(B) the most recent notice sent under this subsection, in the case of a subsequent notice sent under this subsection; and the division has not received under subsection (i) a certified copy of an order reversing, vacating, setting aside, or reducing the public officer's conviction;

the division shall send written notice to the public officer or the public officer's attorney, as appropriate, at the address specified in the notice of the appeal received by the division under subsection (d)(2), inquiring as to whether there has been a final disposition of the appeal. If the public officer or the public officer's attorney does not respond to the division's notice within thirty (30) days after the mailing of the notice, the division may use the surplus transferred under subsection (d)(2), plus any interest earned on the surplus, for the provision of mental health services for residents of Indiana. If the public officer or the public officer's attorney responds to the division's written inquiry within the thirty (30) day period described in this subsection and indicates that there has been a final disposition of the appeal and that subsection (i) does not apply, the division shall use the surplus transferred, plus any interest earned on the surplus, for the provision of mental health services for residents of Indiana. If the public officer or the public officer's attorney responds to the division's written inquiry within the thirty (30) day period described in this subsection and indicates that there has not been a final disposition of the appeal, the division may not use the surplus transferred, or any interest earned on the surplus, for the provision of mental health services for residents of Indiana until the division receives notice from the public officer or the public officer's attorney that there has been a final disposition of the appeal and that subsection (i) does not apply. The division is not required to send more than three (3) notices under this subsection every five (5) years, beginning with the date that is five (5) years after the filing of the appeal. However, the division may not use the surplus transferred, or any interest earned on the



1 **surplus, for the provision of mental health services for residents of**
 2 **Indiana until the division receives notice from the public officer or**
 3 **the public officer's attorney that there has been a final disposition**
 4 **of the appeal and that subsection (i) does not apply.**

5 SECTION 2. IC 5-8-1-38, AS AMENDED BY P.L.57-2015,
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2016]: Sec. 38. (a) The following definitions apply throughout
 8 this section:

9 (1) "Felony" has the meaning set forth in IC 3-8-1-5.

10 (2) "Public officer" means either of the following:

11 (A) An individual who holds an elected office (as defined in
 12 IC 3-5-2-17), other than a federal office.

13 (B) An individual who holds an appointed office of the state
 14 or a political subdivision (as defined in IC 36-1-2-13).

15 (b) Any public officer convicted of a felony during the public
 16 officer's term of office shall:

17 (1) be removed from office by operation of law when:

18 (A) in a jury trial, a jury publicly announces a verdict against
 19 the person for a felony;

20 (B) in a bench trial, the court publicly announces a verdict
 21 against the person for a felony; or

22 (C) in a guilty plea hearing, the person pleads guilty or nolo
 23 contendere to a felony; ~~and~~

24 (2) not receive any salary or remuneration from the time the
 25 public officer is removed from office under subdivision (1); **and**

26 **(3) if the removal from office under subdivision (1) occurs**
 27 **after June 30, 2016, have the public officer's candidate's**
 28 **committee disbanded by operation of law under IC 3-9-1-12.5.**

29 **Whenever a public officer is removed from office under**
 30 **subdivision (1) after June 30, 2016, the court in which the**
 31 **public officer is convicted under subdivision (1) must file a**
 32 **certified copy of the sentencing order with the election**
 33 **commission or the appropriate county election board, as set**
 34 **forth in IC 3-9-1-12.5(c).**

35 (c) The subsequent reduction of a felony to a Class A misdemeanor
 36 under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

37 (1) jury has announced its verdict against the person for a felony;

38 (2) court has announced its verdict against the person for a felony;
 39 or

40 (3) person has pleaded guilty or nolo contendere to a felony;

41 does not affect the operation of subsection (b).

42 (d) If the conviction is:



- (1) reversed;
- (2) vacated;
- (3) set aside;
- (4) for a felony other than a felony arising out of an action taken in the public officer's official capacity, reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or
- (5) not entered because the trial court did not accept the guilty plea;

and the public officer's term has not expired, the public officer shall be reinstated in office, ~~and~~ receive any salary or other remuneration that the public officer would have received had the public officer not been removed from office, **and, in the case of a removal from office under subsection (b)(1) that occurs after June 30, 2016, receive any surplus held in trust by the division of mental health and addiction under IC 3-9-1-12.5(d)(2), along with any interest earned on the surplus, upon receipt by the division of mental health and addiction from the public officer or the public officer's attorney of a certified copy of the order reversing, vacating, setting aside, or reducing the conviction, as set forth in IC 3-9-1-12.5(i).**

(e) If the conviction is reversed, vacated, or set aside and the public officer's term has expired, the public officer shall receive any:

- (1) salary or other remuneration that the public officer would have received had the public officer not been removed from office; **and**
- (2) **in the case of a removal from office under subsection (b)(1) that occurs after June 30, 2016, surplus held in trust by the division of mental health and addiction under IC 3-9-1-12.5(d)(2), along with any interest earned on the surplus, upon receipt by the division of mental health and addiction from the public officer or the public officer's attorney of a certified copy of the order reversing, vacating, setting aside, or reducing the conviction, as set forth in IC 3-9-1-12.5(i).**

(f) A vacancy in a public office caused by the removal of a public officer under this section shall be filled as provided by law. If a convicted public officer is reinstated, the person filling the office during the appeal shall cease to hold the office.

(g) This subsection applies whenever:

- (1) a public officer is removed from office by operation of law under subsection (b); and
- (2) a vacancy occurs in a state, county, township, city, or town office as the result of the removal from office.

The court must file a certified copy of the sentencing order with the



1 person who is entitled under IC 5-8-6 to receive notice of the death of
 2 an individual holding the office. The person receiving a copy of the
 3 sentencing order must give notice of the vacancy in the same manner
 4 as if the person had received a notice under IC 5-8-6. The person who
 5 is required or permitted to fill the vacancy must comply with IC 3-13.

6 (h) This subsection applies if a public officer is reinstated in office
 7 under subsection (d). The court must file a certified copy of the order
 8 reversing, vacating, reducing, or setting aside the conviction with the
 9 person who is entitled under IC 5-8-6 to receive notice of the death of
 10 an individual holding the office. The person receiving a copy of the
 11 order must give notice of the reinstatement in the same manner as
 12 notice of a vacancy would be given under IC 5-8-6. The person
 13 receiving a copy of the order must also give notice to the person who
 14 was selected to fill the vacancy before the reinstatement occurred.

15 SECTION 3. IC 12-21-5-5 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2016]: **Sec. 5. (a) As used in this section, "fund" refers to the**
 18 **public officer mental health trust fund established by section 5.5 of**
 19 **this chapter.**

20 **(b) The division shall:**

21 **(1) deposit into the fund money transferred to the division by**
 22 **a public officer's candidate's committee under**
 23 **IC 3-9-1-12.5(d)(2); and**

24 **(2) distribute money held in trust in the fund in accordance**
 25 **with:**

26 **(A) IC 3-9-1-12.5(i);**

27 **(B) IC 3-9-1-12.5(j); or**

28 **(C) IC 3-9-1-12.5(k);**

29 **as appropriate.**

30 SECTION 4. IC 12-21-5-5.5 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2016]: **Sec. 5.5. (a) The public officer mental health trust fund is**
 33 **established for the purpose of providing mental health services for**
 34 **residents of Indiana, as set forth in IC 3-1-9-12.5(d)(2). The fund**
 35 **shall be administered by the division.**

36 **(b) The fund consists of surplus funds transferred to the division**
 37 **under IC 3-9-1-12.5(d)(2).**

38 **(c) The expenses of administering the fund shall be paid from**
 39 **money in the fund.**

40 **(d) The treasurer of state shall invest money in the fund not**
 41 **currently needed to meet the obligations of the fund in the same**
 42 **manner as other public money may be invested. Interest that**



- 1 accrues from these investments shall be deposited in the fund.
2 (e) Money in the fund at the end of a state fiscal year does not
3 revert to the state general fund.
4 (f) Money in the fund is continuously appropriated for the
5 purposes set forth in:
6 (1) IC 3-9-1-12.5(i);
7 (2) IC 3-9-1-12.5(j); and
8 (3) IC 3-9-1-12.5(k).

